

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)

of)

WAI'OLA O MOLOKA'I, INC.)

) Docket No. 2009-0049

)
) For review and approval of rate
) increases; revised rate schedules;
) and revised rules.)
)
_____)

FILED
2009 MAR 24 P 3:25
PUBLIC UTILITIES
COMMISSION

PROTECTIVE ORDER
STIPULATION FOR PROTECTIVE ORDER
EXHIBIT A
and
CERTIFICATE OF SERVICE

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)	
)	
of)	
)	Docket No. 2009-0049
WAI'OLA O MOLOKA'I, INC.)	
)	
For review and approval of rate)	
increases; revised rate schedules;)	
and revised rules.)	
_____)	

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, WAI'OLA O MOLOKA'I, INC., a Hawaii corporation ("Applicant"), by and through its attorneys, Morihara Lau & Fong LLP, filed the above-referenced Application on March 2, 2009, requesting various approvals from the Hawaii Public Utilities Commission ("Commission") in connection with the proposed increase in Applicant's rates and charges, pursuant to Hawaii Revised Statutes ("HRS") § 269-16 ("Application");

WHEREAS, Applicant maintains that the disclosure of certain confidential information could disadvantage and harm Applicant and/or its related entities in that disclosure of certain information may touch upon, among other things, Applicant's and/or its related entities' respective company, customer and employee privacy concerns and other business and financial matters deemed confidential, privileged and proprietary;

WHEREAS, Applicant anticipates that certain information that may be requested or filed during the course of the proceeding in the subject docket will be considered to be privileged, confidential or proprietary by Applicant and/or its related entities;

WHEREAS, Applicant and the Division of Consumer Advocacy ("Consumer Advocate") are parties in this proceeding;

WHEREAS, the parties desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential and any information which any party may in the future contend to be confidential;

WHEREAS, the parties understand that during the course of the evidentiary hearing in this matter, if any, if it becomes necessary to address any information provided pursuant to this protective order during the course of the hearing, that portion of the proceeding will be heard in camera; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission, that the Commission issues a protective order covering the confidential information identified in the course of the proceeding in connection with the Application as follows:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of trade secrets and other confidential information produced by any party in this docket.
2. All parties or participants to all or any portion of this docket, including persons who are granted intervention or participation after the effective date of this protective order, shall be subject to this protective order and shall be entitled to all

confidential information of a party or participant under the provisions of this protective order to the extent allowed by the Commission.

APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

3. To the extent that any of the documents covered by this protective order consist of "government records," as defined in HRS § 92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

CLASSIFICATION

4. A party to this proceeding may designate as confidential any information it believes, in good faith, contains trade secrets or other confidential research, development, commercial, customer usage, financial, vendor, or bid information, including but not limited to cost support studies. Such information shall be protected against disclosure to a non-qualified person pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the party claiming confidentiality, as provided in paragraph 13 below.

5. If a party designates information as confidential pursuant to paragraph 4 above or 6 below, it shall produce the confidential information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide certain information in writing to the Commission and the Consumer Advocate. If a party seeks to designate information as confidential, it must: (1) identify, in reasonable detail,

the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. If the Commission or any party challenges the claim of confidentiality of the information, the party claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether the information is confidential and whether it should be disclosed under a protective order. Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

6. Confidential information provided to the Commission or a party, orally or in any other form, shall be protected as fully as confidential information provided in written form. A party shall notify the Commission and the parties when information provided orally or in other than written form includes confidential information. At the time of such notification, the party shall, in the manner provided in paragraph 5 above, specify the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information.

FORMS OF CONFIDENTIAL INFORMATION

7. All information claimed to be confidential information shall be subject to the terms of this protective order, and shall be treated by all qualified persons (as defined by this protective order) as constituting confidential information. Any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and reflect the underlying confidential information, shall also be

subject to the terms of this protective order.

DESIGNATION

8. Any party claiming that information is confidential shall place upon the applicable material the following legend:

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

9. With respect to any confidential information that is not under the control of the party claiming the information is confidential, other persons shall, to the extent requested by that party, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 above.

10. Any party may request the Commission to designate as confidential information any document or other information previously produced but not designated as confidential, provided that the party, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. In addition, the party claiming confidentiality shall substitute the previously-produced but not designated as confidential material with the identical material under designation as required in Paragraph 8 above.

DISCLOSURE

11. Except as provided in paragraph 13, confidential information shall not be made available or disclosed to any person who is not a "qualified person" as defined in paragraph 12 below.

12. "Qualified person," as used in this protective order means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commission, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Commission in this proceeding;
- c. The Consumer Advocate, its staff, counsel, (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate in this proceeding;
- d. Subject to paragraph 4 above, Applicant and/or its related entities, their respective officers, employees, and counsel (including employees directly employed by such counsel) and any consultants retained by Applicant and/or its related entities;
- e. Subject to paragraph 4 above and to the extent allowed by the Commission, any other party or participant to this proceeding, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by it for this proceeding who are not engaged in developing, planning, marketing, or selling the

party's or participant's products or services, or determining the costs of the party's or participant's products or services or designing prices of the party's or participant's products or services to be charged to customers;

- f. Any other person approved by the party asserting the claim of confidentiality; and
- g. Any other person designated as a qualified person by order of the Commission.

13. When a qualified person wishes to disclose confidential information to a non-qualified person, the qualified person must request permission from the party claiming confidentiality. The request shall identify the non-qualified person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for disclosure. If permission is granted by the party claiming confidentiality, disclosure of the confidential information shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 14 below.

PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing confidential information to a qualified person other than the Commission and its staff and counsel, and the Consumer Advocate and its staff and counsel, the qualified person shall read a copy of this protective order, complete a copy of the agreement attached as Exhibit A to this protective order, and sign the completed

copy of the agreement. A copy of the executed agreement shall be delivered to the party claiming confidentiality and the Commission.

USE OF CONFIDENTIAL INFORMATION

15. Any confidential information obtained under this protective order shall be used solely in connection with this proceeding and any related administrative and judicial proceedings (at which time the information will continue to be treated as confidential), and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court, (b) an order of the Commission, and (c) the UIPA, including any ruling of the Office of Information Practices.

16. Any confidential information obtained under this protective order may be used by the Commission and its staff and counsel in any proceeding pending before the Commission involving the producing party, or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

17. Any confidential information obtained under this protective order may be used by the Consumer Advocate, its staff, its consultant and its counsel in any proceeding pending before the Commission involving the producing party, or where the intended use of such confidential information is for the purpose of assisting the

Consumer Advocate in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if a party desires to file written testimony, exhibits or pleadings which contain or reflect the confidential information, only that part of the page(s) containing or reflecting such information shall be treated as confidential, and that part of a hearing, if any, at which such information is discussed shall be held in camera, or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page, with any such information deleted, shall be filed to be included in the public record, and each such page shall contain the following designation in the upper left-hand corner:

**Confidential Information
Deleted Pursuant To
Protective Order Filed on**

_____.

RETENTION OF CONFIDENTIAL INFORMATION

19. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information, or otherwise secured to ensure that access to and disclosure of the confidential information is limited to a qualified person.

20. Confidential information that is given to or filed with the Commission or its staff and counsel shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

THIS ENVELOPE IS SEALED PURSUANT TO PROTECTIVE ORDER, FILED ON _____, AND CONTAINS DOCUMENTS WITH CONFIDENTIAL INFORMATION. IT IS NOT TO BE OPENED OR THE CONTENTS OF THIS ENVELOPE DISPLAYED OR REVEALED EXCEPT TO QUALIFIED PERSONS AUTHORIZED TO INSPECT THE ENCLOSED DOCUMENTS.

21. Confidential information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a document contains information so sensitive that it should not be copied by anyone, it shall bear the following legend: "Copying Prohibited."

22. If a court or other administrative agency requests, subpoenas, or orders production of confidential information that a party or person has obtained under this protective order, that party or person, prior to disclosure, shall promptly notify the party claiming confidentiality of the request, subpoena, or order.

DURATION OF CONFIDENTIALITY

23. The confidentiality of the information produced pursuant to this protective order shall be preserved until all interested parties, by written stipulation, terminate the protection conferred by this protective order, or until further order of the Commission.

APPEAL TO THE COMMISSION

24. If any interested person disagrees with the designation of information as confidential, the party claiming confidentiality and the person so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the person contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The party claiming confidentiality shall bear the burden of proof in supporting its claim,

and the Commission will determine whether the information shall continue to be designated as confidential under this protective order. Pending a disposition of the motion, the information in question shall be treated as confidential information and shall not be disclosed except as permitted in this protective order.

NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The parties retain the right to contest any assertion or finding of confidentiality or of non-confidentiality. Nothing in this protective order shall prevent any party from objecting to requests for production of information or other discovery requests.

26. The parties retain the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy or materiality.

MODIFICATION OF THE PROTECTIVE ORDER

27. The Commission may modify this protective order on the motion of any party, or on its own motion, upon reasonable notice to the parties and an opportunity for hearing, or the Commission may modify this protective order upon receipt and approval of a written stipulation by the parties.

DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within ninety (90) days after the conclusion of this proceeding, persons in possession of confidential information shall, at the option of the party producing the confidential information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any confidential information. If the party producing the confidential information requests destruction, the

person destroying the information shall certify its destruction to the producing party, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.


29. Counsel and the representatives of record for a party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files on this proceeding. The files shall not be disclosed to any other person.

30. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration required by applicable statutes, rules and administrative directives.

SANCTIONS

31. Any person violating this protective order shall be subject to sanctions imposed by the Commission.

DATED: Honolulu, Hawaii March 24, 2009.


MICHAEL H. LAU
YVONNE Y. IZU
SANDRA L. WILHIDE

Attorneys for
WAI'OLA O MOLOKA'I, INC.


JON S. ITOMURA
LANE H. TSUCHIYAMA

Attorneys for the
Division of Consumer Advocacy Department
of Commerce and Consumer Affairs

APPROVED AND SO ORDERED THIS _____,
at Honolulu, Hawaii.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chairman

By _____
John E. Cole, Commissioner

By _____
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Commission Counsel

EXHIBIT "A"

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, _____, have been presented with a copy of the Protective Order filed by the Public Utilities Commission of the State of Hawaii in Docket No. 2009-0049 on the _____ day of _____, 2009 ("Protective Order").

2. I am employed by, retained by or assisting _____ in Docket No. 2009-0049 and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely to assist _____ and that unless otherwise permitted by the Protective Order, I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person.

4. I further understand that at the conclusion of my assistance to _____, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information to the party claiming confidentiality and I shall abide by the provisions in paragraph 28 of the Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at _____, _____, this _____ 20____.

Signature

Address

(_____)_____
Telephone Number

CERTIFICATE OF SERVICE

The foregoing Protective Order was served on the date of filing by mail, postage prepaid and properly addressed to the following.

MS. CATHERINE P. AWAKUNI
Executive Director
Department of Commerce and Consumer Affairs
Division of Consumer Advocacy
335 Merchant Street, Suite 326
Honolulu, Hawaii 96813

MR. PETER A. NICHOLAS
Wai'ola O Moloka'i, Inc.
c/o Molokai Properties Limited
745 Fort Street Mall, Suite 600
Honolulu, Hawaii 96813

MICHAEL H. LAW, ESQ.
YVONNE Y. IZU, ESQ.
SANDRA L. WILHIDE, ESQ.
Mori-hara Lau & Fong LLP
841 Bishop Street
Suite 400
Honolulu, Hawaii 96813

Attorneys for WAI'OLA O MOLOKA'I, INC.

MORIHARA LAU & FONG LLP

A LIMITED LIABILITY LAW PARTNERSHIP

March 24, 2009

The Honorable Chairman and Members of
the Hawaii Public Utilities Commission
465 South King Street
Kekuanaoa Building, Room 103
Honolulu, Hawaii 96813
Attention: Ji Sook Kim, Esq.

FILED
2009 MAR 24 P 3:25
PUBLIC UTILITIES
COMMISSION

Re: Docket No. 2009-0049 – In the Matter of the Application of Wai'ola O
Moloka'i, Inc., for review and approval of rate increases; revised rate schedules;
and revised rules: Stipulation for Protective Order

Dear Commissioners and Commission Staff:

For the Commission's review and approval, please find enclosed the proposed Stipulation for Protective Order submitted jointly by Wai'ola O Moloka'i, Inc. ("WOM") and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy's ("Consumer Advocate") (together, "Parties"), which is attached hereto as Attachment 1. As part of this attachment, we have also provided a "black-lined" document that shows the changes we have made from the "Sample Stipulation for Protective Order" attached to the Commission's August 26, 2005 guidelines concerning protective orders and confidential information ("2005 Sample Stipulation for Protective Order"). In addition, in response to the Commission Staff's directive to submit an explanation of modifications made to the "2005 Sample Stipulation for Protective Order", Attachment 2 hereto provides a chart describing in detail these changes, which changes have been agreed to by the Parties. Please note that many of the modifications agreed to by the Parties in this proceeding mirror those already included in the protective orders recently issued by the Commission in other prior proceedings.

If you should have any questions, please do not hesitate to contact the undersigned.
Thank you for your consideration.

Very truly yours,

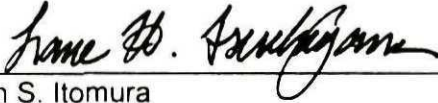


Michael H. Lau
Yvonne Y. Izu
Sandra L. Wilhide
Moriwara Lau & Fong LLP

Attorneys for Wai'ola O Moloka'i, Inc.

The Honorable Chairman and Members of
the Hawaii Public Utilities Commission
March 24, 2009
Page 2

CONCURRED:

A handwritten signature in cursive script, reading "Lane H. Tsuchiyama", written over a horizontal line.

Jon S. Itomura
Lane H. Tsuchiyama

Attorneys for the
Division of Consumer Advocacy
Department of Commerce and Consumer Affairs

Attachments

c: Consumer Advocate
Mr. Peter A. Nicholas

ATTACHMENT 1
(Black-lined)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)

_____ of)

DOCKET NO. _____

Docket No. 2009-0049

To Increase Rates and Charges on)

_____ Tariff No. _____)

WAI'OLA O MOLOKA'I, INC.)

For review and approval of rate
increases; revised rate schedules;
and revised rules.

PROTECTIVE ORDER NO. _____

STIPULATION FOR PROTECTIVE ORDER

EXHIBIT A

and

CERTIFICATE OF SERVICE

Filed _____

At _____ o'clock _____ m.

Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application)

_____ of)

) DOCKET NO. _____

) Docket No. 2009-0049

To Increase Rates and Charges on)

_____ Tariff No. _____)

WAIOLA O MOLOKA'I, INC.

For review and approval of rate
increases; revised rate schedules;
and revised rules.

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, _____ ("_____ or "Applicant") has filed an
application for approval of _____;

WHEREAS, Applicant maintains that disclosure of certain confidential information
could disadvantage Applicant in _____;

WHEREAS, Applicant anticipates that during the course of this proceeding,
information considered to be privileged or confidential by a party may be requested or
filed;

WHEREAS, _____;

WHEREAS, _____;

WHEREAS, _____;

[option 1] — WHEREAS, the Division of Consumer Advocacy ("Consumer Advocate") is ex officio a party to this proceeding pursuant to the Rules of Practice and Procedure before the Public Utilities Commission (the "Commission");

OR

[option 2] — WHEREAS, Applicant and the Division of Consumer Advocacy ("Consumer Advocate") are parties in this proceeding;

WHEREAS, WAI'OLA O MOLOKA'I, INC., a Hawaii corporation ("Applicant"), by and through its attorneys, Morihara Lau & Fong LLP, filed the above-referenced Application on March 2, 2009, requesting various approvals from the Hawaii Public Utilities Commission ("Commission") in connection with the proposed increase in Applicant's rates and charges, pursuant to Hawaii Revised Statutes ("HRS") § 269-16 ("Application");

WHEREAS, Applicant maintains that the disclosure of certain confidential information could disadvantage and harm Applicant and/or its related entities in that disclosure of certain information may touch upon, among other things, Applicant's and/or its related entities' respective company, customer and employee privacy concerns and other business and financial matters deemed confidential, privileged and proprietary;

WHEREAS, Applicant anticipates that certain information that may be requested or filed during the course of the proceeding in the subject docket will be considered to be privileged, confidential or proprietary by Applicant and/or its related entities;

WHEREAS, Applicant and the Division of Consumer Advocacy ("Consumer Advocate") are parties in this proceeding;

WHEREAS, the parties desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential and any information which any party may in the future contend to be confidential;

WHEREAS, the parties understand that during the course of the evidentiary hearing in this matter, if any, if it becomes necessary to address any information provided pursuant to this protective order during the course of the hearing, that portion of the proceeding will be heard in camera; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules of Practice and Procedure before the Public Utilities Commission, that the Commission ~~issue~~issues a protective order covering the confidential information identified in the course of the proceeding in connection with the Application as follows:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of trade secrets and other confidential information produced by any party in this docket.
2. All parties or participants to all or any portion of this docket, including persons who are granted intervention or participation after the effective date of this protective order, shall be subject to this protective order and shall be entitled to all confidential information of a party or participant under the provisions of this protective order to the extent allowed by the Commission.

APPLICATION OF THE UNIFORM INFORMATION PRACTICES ACT

3. To the extent that any of the documents covered by this protective order

consist of "government records," as defined in Hawaii Revised Statutes ("HRS") § 92F-3, the provisions of HRS Chapter 92F ("Uniform Information Practices Act" or "UIPA") shall apply to the disclosure of information contained in such documents. In the event any provision of this protective order conflicts with any provision of the UIPA, the UIPA shall control.

CLASSIFICATION

4. A party to this proceeding may designate as confidential any information it believes, in good faith, contains trade secrets or other confidential research, development, commercial, customer usage, financial, vendor, or bid information, including but not limited to cost support studies. Such information shall be protected against disclosure to a non-qualified person pursuant to the terms of this protective order, unless such information is declassified, or permission to disclose the information to such non-qualified person is granted by the party claiming confidentiality, as provided in paragraph 13 below.

5. If a party designates information as confidential pursuant to paragraph 4 above or 6 below, it shall produce the confidential information in accordance with the procedures described in paragraphs 11 through 14 below, and concurrently provide certain information in writing to the Commission and the Consumer Advocate. If a party seeks to designate information as confidential, it must: (1) identify, in reasonable detail, the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. If the

Commission or any party challenges the claim of confidentiality of the information, the party claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether: ~~(1) the information is confidential and subject to protection under this~~ whether it should be disclosed under a protective order[.], or ~~(2) the challenged information must be disclosed by the producing party.~~ Any challenge to the confidentiality of any information shall be made in accordance with paragraph 24 below.

6. Confidential information provided to the Commission or a party, orally or in any other form, shall be protected as fully as confidential information provided in written form. A party shall notify the Commission and the parties when information provided orally or in other than written form includes confidential information. At the time of such notification, the party shall, in the manner provided in paragraph 5 above, specify the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information.

FORMS OF CONFIDENTIAL INFORMATION

7. All information claimed to be confidential information shall be subject to the terms of this protective order, and shall be treated by all qualified persons (as defined by this protective order) as constituting confidential information. ~~Unless a different treatment is warranted, any~~ Any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and that ~~reflect the underlying confidential information,~~ shall also be subject to the terms of this protective order.

DESIGNATION

8. Any party claiming that information is confidential shall place upon the applicable material the following legend:

**CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER**

Whenever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion. However, if such limitation is not reasonably practicable, the entire document, transcript, or other material may be designated as confidential information.

~~[Option if applicable:] Notwithstanding the above, Applicant has already in the course of the proceeding provided information that it has identified as confidential to the Consumer Advocate and the Commission. The previously submitted confidential information included _____ Subject to challenge pursuant to paragraph 24, this information shall be governed by and protected under this Protective Agreement.¹~~

9. With respect to any confidential information that is not under the control of the party claiming the information is confidential, other persons shall, to the extent requested by that party, cooperate to ensure that all copies of such confidential information bear the legend required in paragraph 8 above.

10. Any party may request the Commission to designate as confidential

¹ ~~By executing this Stipulation, the Consumer Advocate is not waiving its right to so challenge any claims of confidentiality.~~

information any document or other information previously produced but not designated as confidential, provided that the party, in the manner provided in paragraph 5 above, specifies the subject-matter of such confidential information, the basis for the claim of confidentiality, and the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information. In addition, the party claiming confidentiality shall substitute the previously-produced but not designated as confidential material with the identical material under designation as required in Paragraph 8 above.

DISCLOSURE

11. Except as provided in paragraph 13, confidential information shall not be made available or disclosed to any person who is not a "qualified person" as defined in paragraph 12 below.

12. "Qualified person," as used in this protective order means any one of the following:

- a. The author(s), addressee(s), or originator(s) of the confidential information;
- b. The Commission, its staff, counsel (including employees directly employed by such counsel), and any consultants retained by the Commission in this proceeding;
- c. The Consumer Advocate, its staff, counsel, (including employees directly employed by such counsel), and any consultants retained by the Consumer Advocate in this proceeding;
- d. [option] ~~-----~~ Subject to paragraph 4 above, Applicant, and/or its

related entities, their respective officers and employees, its and
counsel (including employees directly employed by such counsel)
and any consultants retained by Applicant;

~~-----[option]-----~~ Independent consultants employed by a party who
are not employees of the party, or in-house subject matter experts
and/or regulatory personnel, who are not engaged in developing,
planning, marketing, or selling the party's products or services, or
determining the costs of the party's products or services or
designing prices of the party's products or services to be charged
customersits related entities;

e. Any Subject to paragraph 4 above and to the extent allowed by the
Commission, any other party or participant to this proceeding, its
staff, its counsel (including employees directly employed by such
counsel), and any consultants retained by it for this proceeding, to
the extent allowed by the Commission; who are not engaged in
developing, planning, marketing, or selling the party's or
participant's products or services, or determining the costs of the
party's or participant's products or services or designing prices of
the party's or participant's products or services to be charged to
customers;

f. Any other person approved by the party asserting the claim of
confidentiality; and

- g. Any other person designated as a qualified person by order of the Commission.

13. When a qualified person wishes to disclose confidential information to a non-qualified person, the qualified person must request permission from the party claiming confidentiality. The request shall identify the non-qualified person to whom disclosure is desired; disclose any past, present, or anticipated affiliation between the qualified person and the non-qualified person; specify the exact information to be disclosed; and state the reasons for disclosure. If permission is granted by the party claiming confidentiality, disclosure of the confidential information shall be made to such non-qualified person in the same manner as provided for qualified persons in paragraph 14 below.

PROCEDURE FOR OBTAINING ACCESS

14. Prior to disclosing confidential information to a qualified person other than the Commission and its staff and counsel, and the Consumer Advocate and its staff and counsel, the qualified person shall read a copy of this protective order, complete a copy of the agreement attached as Exhibit A to this protective order, and sign the completed copy of the agreement. A copy of the executed agreement shall be delivered to the party claiming confidentiality and the Commission.

USE OF CONFIDENTIAL INFORMATION

15. Any confidential information obtained under this protective order shall be used solely in connection with this proceeding and any related administrative and judicial proceedings (at which time the information will continue to be treated as

confidential), and shall not be used for any other purpose, including business, governmental or commercial purposes, or in any other administrative or judicial proceeding, except as provided in paragraphs 16 and 17, and except as may be directed by (a) an order of court, (b) an order of the Commission, and (c) the UIPA, including any ruling of the Office of Information Practices.

16. Any confidential information obtained under this protective order may be used by the Commission and its staff and counsel in any proceeding pending before the Commission involving the producing party, or where the intended use of such confidential information is for the purpose of assisting the Commission in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

17. Any confidential information obtained under this protective order may be used by the Consumer Advocate, its staff, its consultant and its counsel in any proceeding pending before the Commission involving the producing party, or where the intended use of such confidential information is for the purpose of assisting the Consumer Advocate in fulfilling its statutory duties and responsibilities. The confidential information shall continue to be treated as confidential until the protection conferred by this protective order (or any other applicable protective order) is terminated by the producing party, or until further order of the Commission.

18. Unless otherwise ordered by the Commission, if a party desires to file written testimony, exhibits or pleadings that which contain or reflect the confidential

information, only that part of the page(s) containing or reflecting such information shall be treated as confidential, and that part of any hearing, if any, at which such information is discussed shall be held in camera, or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such information. A copy of any confidential page, with any such information deleted, shall be filed to be included in the public record, and each such page shall contain the following designation in the upper left-hand corner:

**Confidential Information
Deleted Pursuant To
Protective Order
No. _____ Filed on
_____.**

RETENTION OF CONFIDENTIAL INFORMATION

19. Confidential information shall be retained in a locked cabinet dedicated to the storage of confidential information, or otherwise secured to ensure that access to and disclosure of the confidential information is limited to a qualified person.

20. Confidential information that is given to or filed with the Commission or its staff and counsel shall be separately bound and placed in a sealed envelope or other appropriate sealed container on which shall appear the following legend:

**THIS ENVELOPE IS SEALED PURSUANT TO
PROTECTIVE ORDER NO. _____, FILED ON
_____, AND CONTAINS DOCUMENTS WITH
CONFIDENTIAL INFORMATION. IT IS NOT TO BE
OPENED OR THE CONTENTS OF THIS ENVELOPE
DISPLAYED OR REVEALED EXCEPT TO QUALIFIED
PERSONS AUTHORIZED TO INSPECT THE ENCLOSED
DOCUMENTS.**

21. Confidential information shall not be reproduced or duplicated, except to make working copies and copies to be filed with the Commission under seal. If a

document contains information so sensitive that it should not be copied by anyone, it shall bear the following legend: "Copying Prohibited."

22. If a court or other administrative agency requests, subpoenas, or orders production of confidential information that a party or person has obtained under this protective order, that party or person, prior to disclosure, shall promptly notify the party claiming confidentiality of the request, subpoena, or order.

DURATION OF CONFIDENTIALITY

23. The confidentiality of the information produced pursuant to this protective order shall be preserved until all interested parties, by written stipulation, terminate the protection conferred by this protective order, or until further order of the Commission.

APPEAL TO THE COMMISSION

24. If any interested person disagrees with the designation of information as confidential, the party claiming confidentiality and the person so disagreeing shall first make a good faith attempt to resolve the dispute on an informal basis. If the dispute cannot be resolved, the person contesting the confidentiality of the information shall file a motion to compel disclosure or any other appropriate motion with the Commission. The party claiming confidentiality shall bear the burden of proof in supporting its claim, and the Commission will determine whether the information shall continue to be designated as confidential under this protective order. Pending a disposition of the motion, the information in question shall be treated as confidential information and shall not be disclosed except as permitted in this protective order.

NON-WAIVER OF OBJECTIONS AND RIGHTS

25. The parties retain the right to contest any assertion or finding of confidentiality or of non-confidentiality. Nothing in this protective order shall prevent any party from objecting to requests for production of information or other discovery requests.

26. The parties retain the right to question, challenge, and object to the admissibility of confidential information on the grounds of relevancy or materiality.

MODIFICATION OF THE PROTECTIVE ORDER

27. The Commission may modify this protective order on the motion of any party, or on its own motion, upon reasonable notice to the parties and an opportunity for hearing, or the Commission may modify this protective order upon receipt and approval of a written stipulation by the parties.

DISPOSAL OF CONFIDENTIAL INFORMATION

28. Except as provided in paragraphs 29 and 30 below, within ninety (90) days after the conclusion of this proceeding, persons in possession of confidential information shall, at the option of the party producing the confidential information, return or destroy all such materials and all copies, notes, tapes, papers, or other medium containing, summarizing, excerpting, or otherwise embodying any confidential information. If the party producing the confidential information requests destruction, the person destroying the information shall certify its destruction to the producing party, indicating the name of the person destroying the documents, the method of destruction, and the identity of the specific documents destroyed.

29. Counsel and the representatives of record for a party shall be entitled to retain memoranda, pleadings, exhibits of record, written testimony, and transcripts embodying information derived from or incorporating confidential information to the extent reasonably necessary to preserve files on this proceeding. The files shall not be disclosed to any other person.

30. Confidential information produced in this proceeding shall remain in the possession of the Commission, the Consumer Advocate and counsel for the Consumer Advocate for the duration required by applicable statutes, rules and administrative directives.

SANCTIONS

31. Any person violating this protective order shall be subject to sanctions imposed by the Commission.

____ DATED: Honolulu, Hawaii _____.

Attorney for Applicant

MICHAEL H. LAU
YVONNE Y. IZU
SANDRA L. WILHIDE

Attorneys for
WAI'OLA O MOLOKA'I, INC.

JON S. ITOMURA
Attorney LANE H. TSUCHIYAMA

Attorneys for the
Division of Consumer Advocacy Department
of Commerce and Consumer Affairs

APPROVED AND SO ORDERED THIS _____,
at Honolulu, Hawaii.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chairman

By _____
Wayne H. Kimura John E. Cole,
Commissioner

By _____
Janet E. Kawelo Leslie H. Kondo,
Commissioner

APPROVED AS TO FORM:

Commission Counsel

EXHIBIT "A"

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PROTECTIVE AGREEMENT

1. I, _____, have been presented with a copy of the Protective Order No. _____ issued filed by the Hawaii Public Utilities Commission of the State of Hawaii in Docket No. _____ 2009-0049 on the _____ day of _____, 20042009 ("Protective Order").

2. I am employed _____ by, retained by _____ or assisting _____ in Docket No. _____ 2009-0049 and have requested review of the confidential information covered by the Protective Order.

3. I understand the confidential information covered by the Protective Order is to be used solely to assist _____ and that unless otherwise permitted by the Protective Order, I am to make no other use of the confidential information, nor am I to disclose the confidential information to any other person.

4. I further understand that at the conclusion of my assistance to _____, I shall account for each copy, extract, note and summary of, or other document containing any part of such confidential information to the party claiming confidentiality and I shall abide by the provisions in paragraph 28 of the Protective Order, unless otherwise permitted by paragraphs 29 and 30 of the Protective Order.

5. I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

DATED at _____, _____, this _____

_____ 20 ____.

Signature

Address

(____) _____
Telephone Number

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the The foregoing
Protective Order No. _____, upon the following party
(parties) by hand delivery or was served on the date of filing by mail, postage prepaid
and properly addressed to the following.

DIVISION OF CONSUMER ADVOCACY
MS. CATHERINE P. AWAKUNI
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P.O. Box 541

Executive Director
Department of Commerce and Consumer Affairs
Division of Consumer Advocacy
335 Merchant Street, Suite 326
Honolulu, Hawaii 9680996813

MR. PETER A. NICHOLAS
APPLICANT
123 Main Wai'ola O Moloka'i, Inc.
c/o Molokai Properties Limited
745 Fort Street Mall, Suite 600
Any City, USA 00000

Honolulu, Hawaii 96813

MICHAEL H. LAW, ESQ.
YVONNE Y. IZU, ESQ.
SANDRA L. WILHIDE, ESQ.
Morihara Lau & Fong LLP
841 Bishop Street
Suite 400
Honolulu, Hawaii 96813

Attorneys for WAI'OLA O MOLOKA'I, INC.

Chief Clerk

Dated: _____

ATTACHMENT 2

DOCKET NO. 2009-0049
WOM RATE CASE
DIFFERENCES BETWEEN PROPOSED STIPULATION FOR PROTECTIVE ORDER AND
COMMISSION'S AUGUST 26, 2005 "SAMPLE PROTECTIVE ORDER"
(See Attachment 1 "Blacklined Version")

Cover Page 1	<ul style="list-style-type: none">• Added the title and docket number to the caption as it appears in the Application.• Deleted the words "Sample Protective Order August 2005". <p>Purpose: Language was added and/or deleted to reflect the applicable title and docket number, as reflected in the Application, filed on March 2, 2009, in Docket No. 2009-0049 ("Application").</p>
Cover Pages 1 to 2	<ul style="list-style-type: none">• Deleted reference to the protective order number and related filing information.• Deleted the signature line for the Chief Clerk of the Commission. <p>Purpose: Language was deleted based on the Parties' understanding that the Commission will no longer be issuing a protective order number. The deletions were also made to accommodate scanning and importing the protective order into the Commission's Document Management System ("DMS").</p>
Page 1	<ul style="list-style-type: none">• Added the title and docket number to the caption as it appears in the Application. <p>Purpose: Language was added and/or deleted to reflect the applicable title and docket number, as reflected in the Application.</p>
Page 1	<ul style="list-style-type: none">• The first "WHEREAS" clause has been revised to read as follows: WHEREAS, WAI'OLA O MOLOKA'I, INC., a Hawaii corporation ("Applicant"), by and through its attorneys, Morihara Lau & Fong LLP, filed the above-referenced Application on March 2, 2009, requesting various approvals from the Hawaii Public Utilities Commission ("Commission") in connection with its proposed increase in Applicant's rates and charges, pursuant to Hawaii Revised Statutes ("HRS") § 269-16 ("Application"); <p>Purpose: Language was inserted to reflect the filing of the Application.</p>

Page 2	<ul style="list-style-type: none">The second "WHEREAS" clause has been revised to read as follows: WHEREAS, Applicant maintains that the disclosure of certain confidential information could disadvantage and harm Applicant and/or its related entities in that disclosure of certain information may touch upon, among other things, Applicant's and/or its related entities' respective company, customer and employee privacy concerns and other business and financial matters deemed confidential, privileged and proprietary; Purpose: Language was inserted to reflect that certain information could harm WOM and/or its related entities, in that such information may be deemed confidential, privileged and proprietary.
Page 2	<ul style="list-style-type: none">The third "WHEREAS" clause has been revised to read as follows: WHEREAS, Applicant anticipates that certain information that may be requested or filed during the course of the proceeding in the subject docket will be considered to be privileged, confidential or proprietary by Applicant and/or its related entities; Purpose: Language was inserted to reflect that certain information that may be requested or filed in this proceeding will be considered to be confidential, privileged or propriety by Applicant and/or its related entities.
Page 2	<ul style="list-style-type: none">Deleted the paragraph labeled "[option 1]", and the words "[option 2]" in the paragraph labeled "[option 2]". Purpose: The Parties chose and agreed to adopt option 2.
Page 3	<ul style="list-style-type: none">Added the letter "s" to the word "issue" in the paragraph beginning with "NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED". Purpose: The letter "s" was added to the word "issue" for grammatical purposes.
Page 3	<ul style="list-style-type: none">Deleted the words "Hawaii Revised Statutes", and instead utilized the word "HRS" in Paragraph 3. Purpose: Hawaii Revised Statutes was previously defined as "HRS". As such, this was revised to utilize the defined term.

Page 4	<ul style="list-style-type: none">Revised the first sentence of Paragraph 4 to include the words "customer usage", as follows: A party to this proceeding may designate as confidential any information it believes, in good faith, contains trade secrets or other confidential research, development, commercial, customer usage, financial, vendor, or bid information, including but not limited to cost support studies. <p><u>Purpose:</u> The term "customer usage" was inserted to clarify that customer usage information could be designated as confidential.</p>
Pages 4 to 5	<ul style="list-style-type: none">Revised the third sentence of Paragraph 5 to read as follows: If the Commission or any party challenges the claim of confidentiality of the information, the party claiming confidentiality shall bear the burden of proof in supporting its claim of confidentiality, and the Commission will determine whether the information is confidential and whether it should be disclosed under a protective order. <p><u>Purpose:</u> Language was revised to clarify what the Commission will determine when a claim of confidentiality is challenged.</p>
Page 5	<ul style="list-style-type: none">Revised the second sentence of Paragraph 7 to read as follows: Any notes, summaries, abstracts, or analyses that are prepared by counsel, experts, or other qualified persons, and reflect the underlying confidential information, shall also be subject to the terms of this protective order. <p><u>Purpose:</u> Language was revised to clarify the types of information that can be made subject to the terms of the protective order.</p>
Page 6	<ul style="list-style-type: none">Deleted the subparagraph entitled "[Option if applicable:]" at the end of Paragraph 8. <p><u>Purpose:</u> Language was deleted as it was deemed inapplicable in this proceeding.</p>

Pages 7 to 8	<ul style="list-style-type: none">Revised subparagraph 12(d) to read as follows: Subject to paragraph 4 above, Applicant and/or its related entities, their respective officers, employees, and counsel (including employees directly employed by such counsel) and any consultants retained by Applicant and/or its related entities; <u>Purpose:</u> Language was revised to clarify that subparagraph 12(d) is subject to paragraph 4 of the protective order. Language was also added to clarify that WOM and/or its related entities, their respective officers, employees and counsel may be considered a "qualified person" under subparagraph 12(d). The "[option]" language was deleted as it was inapplicable in this proceeding.
Page 8	<ul style="list-style-type: none">Inserted subparagraph 12(e) to read as follows: Subject to paragraph 4 above and to the extent allowed by the Commission, any other party or participant to this proceeding, its staff, its counsel (including employees directly employed by such counsel), and any consultants retained by it for this proceeding, who are not engaged in developing, planning, marketing, or selling the party's or participant's products or services, or determining the costs of the party's or participant's products or services or designing prices of the party's or participant's products or services to be charged to customers; <u>Purpose:</u> Language was revised to clarify that subparagraph 12(e) is also subject to paragraph 4 of the protective order, to the extent allowed by the Commission. Language was also added to clarify that, in addition to the Consumer Advocate, any other party or participant in this proceeding, its staff, its counsel and any consultants retained may be considered a "qualified person" under subparagraph 12(e), as well as to provide additional limitations or qualifications for consultants.
Page 9	<ul style="list-style-type: none">Revised the first sentence of subparagraph 14 to read as follows: Prior to disclosing confidential information to a qualified person other than the Commission and its staff and counsel, and the Consumer Advocate and its staff and counsel, the qualified person shall read a copy of this protective order, complete a copy of the agreement attached as Exhibit A to this protective order, and sign the completed copy of the agreement. <u>Purpose:</u> Language was included to allow the Consumer Advocate and its staff and counsel to be in parity with the Commission's staff and counsel in not having to sign off on the protective agreements.

Pages 10 to 11	<ul style="list-style-type: none"> Revised the first sentence of Paragraph 18 to read as follows: <p>Unless otherwise ordered by the Commission, if a party desires to file written testimony, exhibits or pleadings which contain or reflect the confidential information, only that part of the page(s) containing or reflecting such information shall be treated as confidential, and that part of a hearing, if any, at which such information is discussed shall be held in camera, or under other conditions imposed by the Commission to prevent unnecessary public disclosure of such information.</p> <p>Purpose: Several non-substantive changes were made for grammatical purposes.</p>
Page 11	<ul style="list-style-type: none"> Revised the second sentence of paragraph 18 by deleting reference to the protective order number and adding reference to the filing date of the protective order. <p>Purpose: These changes were made based on the Parties' understanding that the Commission will no longer be issuing a protective order number.</p>
Page 11	<ul style="list-style-type: none"> Revised the first sentence of paragraph 20 by deleting reference to the protective order number and adding reference to the filing date of the protective order. <p>Purpose: These changes were made based on the Parties' understanding that the Commission will no longer be issuing a protective order number.</p>
Pages 12 to 13	<ul style="list-style-type: none"> Added the following sentence to the end of Paragraph 25: <p>Nothing in this protective order shall prevent any party from objecting to requests for production of information or other discovery requests.</p> <p>Purpose: Language was added to clarify that any party may object to requests for production of information or other discovery requests.</p>

Page 13	<ul style="list-style-type: none"> Revised Paragraph 27 to read as follows: The Commission may modify this protective order on the motion of any party, or on its own motion, upon reasonable notice to the parties and an opportunity for hearing, or the Commission may modify this protective order upon receipt and approval of a written stipulation by the parties. <p>Purpose: Language was revised to clarify that the Commission may modify the protective order upon receipt and approval of a written stipulation by the parties.</p>
Page 13	<ul style="list-style-type: none"> Added the word "ninety" to the first sentence of Paragraph 28. <p>Purpose: The word "ninety" was added in before the number "90" for clarification and formatting purposes.</p>
Page 14	<ul style="list-style-type: none"> Revised the signature blocks to reflect the names of the attorneys representing WOM and the Consumer Advocate. <p>Purpose: Language was revised to reflect the names of the attorneys representing WOM and the Consumer Advocate.</p>
Page 15	<ul style="list-style-type: none"> Revised signature blocks to reflect the names of the current Commissioners. <p>Purpose: Language was revised to reflect the names of the current Commissioners.</p>
Exhibit "A"	<ul style="list-style-type: none"> Revised Paragraph 1 to read as follows: 1. I, _____, have been presented with a copy of the Protective Order filed by the Public Utilities Commission of the State of Hawaii in Docket No. 2009-0049 on the ____ day of _____, 2009 ("Protective Order"). Revised Paragraph 2 to read as follows: 2. I am employed by, retained by or assisting _____ in Docket No. 2009-0049 and have requested review of the confidential information covered by the Protective Order. <p>Purpose: Language was deleted and/or added based on the Parties'</p>

	<p>understanding that the Commission will no longer be issuing a protective order number. In addition, several non-substantive language changes were made to reflect the applicable docket number, current date and/or for grammatical purposes.</p>
Certificate of Service	<ul style="list-style-type: none">• Revised the first paragraph to reflect that the protective order will be served on the date of filing by mail, postage prepaid and properly addressed.• Revised the contacts section to reflect the names and addresses of the parties in this proceeding.• Deleted the date and signature line for the "Chief Clerk". <p>Purpose: Language was added and/or deleted to clarify the applicable method of service, and to reflect the names and addresses of the parties in this proceeding. The deletions were also made for the purpose of scanning and importing the protective order into the Commission's DMS.</p>